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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

GOOGLE LLC,

Plaintiff and Counterdefendant,

v.

SONOS, INC.,

Defendant and Counterclaimant.

Case No. 3:20-cv-06754-WHA
Related to Case No. 3:21-cv-07559-WHA

**DECLARATION OF COLE B.
RICHTER IN SUPPORT OF
GOOGLE'S ADMINISTRATIVE
MOTION TO CONSIDER WHETHER
ANOTHER PARTY'S MATERIAL
SHOULD BE SEALED (DKT. 512)**

I, Cole B. Richter, declare as follows and would so testify under oath if called upon:

1. I am an attorney with the law firm of Lee Sullivan Shea & Smith LLP, counsel of record to Sonos, Inc. (“Sonos”) in the above-captioned matter. I am a member in good standing of the Bar of the State of Illinois. I have been admitted *pro hac vice* in this matter. I make this declaration based on my personal knowledge, unless otherwise noted. If called, I can and will testify competently to the matters set forth herein.

2. I make this declaration in support of Google’s Administrative Motion to Consider Whether Another Party’s Material Should be Sealed filed on February 21, 2023 (Dkt. 512) (“Administrative Motion to Consider”), in connection with Google LLC’s Opposition to Sonos, Inc.’s Motion to Realign the Parties (“Opposition”).

3. Sonos seeks an order sealing the materials as listed below¹:

Document	Portions Google Sought to Be Filed Under Seal	Portions Sonos Seeks to Be Filed Under Seal	Designating Party
Google’s Opposition	Portions highlighted in green	The green highlighted text on page 3, lines 7-8. ²	Sonos
Exhibit 1 to the Declaration of Jocelyn Ma in Support of Google’s Opposition	Entire document	Entire document	Sonos

4. I understand that the Ninth Circuit has recognized two different standards that may apply to a request to seal a document, the “compelling reasons” standard and the “good cause” standard. *Blessing v. Plex Sys., Inc.*, No. 21-CV-05951-PJH, 2021 WL 6064006, at *12 (N.D. Cal. Dec. 22, 2021) (citing *Ctr. For Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096-97 (9th Cir. 2016)). The compelling reasons standard applies to any sealing request made in

¹ Google’s Administrative Motion to Consider also seeks to seal Exhibit 2. Sonos advises that Exhibit 2 does not contain Sonos confidential information and/or material.

² The other green highlighted text in Google’s Opposition does not contain Sonos confidential information and/or material.

1 connection with a motion that is “more than tangentially related to the merits of a case.” *Id.*
 2 Accordingly, I understand courts in this district apply a “compelling reasons” standard to a
 3 sealing request made in connection with a motion for summary judgment. *See, e.g., Snapkeys,*
 4 *Ltd. v. Google LLC*, No. 19-CV-02658-LHK, 2021 WL 1951250, at *2 (N.D. Cal. May 14, 2021).
 5 By contrast, “documents attached to non-dispositive motions are not subject to the same strong
 6 presumption of access” and “parties moving to seal” must instead “meet the lower ‘good cause’
 7 standard.” *Unlocked Media Inc. v. Google LLC*, 21-cv-07250-HSG, at *1 (N.D. Cal. Sep. 30,
 8 2022). Under either standard, the Court should order the above-listed documents sealed.

9 5. I understand that in *Unlocked Media*, for example, the court—applying the higher
 10 compelling reasons standard—granted the plaintiff’s motions to seal “excerpts from the complaint
 11 that contain confidential business and financial information relating to the click-through rates that
 12 Plaintiff obtained from its advertising partners, the average revenue per smartphone user that
 13 Plaintiff received from its partners, the dollar value(s) of the rewards that smartphone users
 14 received for seeing advertisements, user attrition rates, and prospective partners that Plaintiff
 15 sought to work with in the future.” *Id.* at *2. I understand that the court concluded that “[s]uch
 16 terms, if public, could be used by both Plaintiff’s and its partners’ competitors to give them an
 17 unfair advantage in the development and negotiations of rival products.” *Id.*

18 6. The green highlighted portions in Google’s Opposition, as identified in the table
 19 above table, and Exhibit 1, reference and contain Sonos’s confidential business information and
 20 trade secrets, including terms to a proposed confidential agreement that is not public. Disclosure
 21 of this information would harm Sonos’s competitive standing by giving Sonos’s competitors
 22 highly sensitive information about Sonos’s business dealings with other entities. Specifically,
 23 this information would show Sonos’s competitors precise details of licensing terms considered by
 24 Sonos in the context of a proposed patent license and business agreement. This information
 25 includes a proposed lump sum payment amount that Google would pay Sonos as part of the
 26 proposed confidential agreement. Sealing this information would “prevent competitors from
 27 gaining insight into [Sonos’s] business model and strategy.” *In re Qualcomm Litig.*, No. 3:17-cv-
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1 0108-GPC-MDD, at *4 (S.D. Cal. Nov. 8, 2017). A less restrictive alternative than sealing said
2 documents would not be sufficient because the information sought to be sealed is Sonos's
3 confidential business information and trade secrets and Google contends that this information is
4 necessary to Google's Opposition. *See* declaration of Lana Robins in support of Google's
5 administrative motion to seal. Dkt. 511-1, ¶ 4.

6 7. Sonos's request is narrowly tailored to protect its confidential information.

7 I declare under penalty of perjury that the foregoing is true and correct to the best of my
8 knowledge. Executed this 28th day of February, 2023 in Chicago, Illinois.

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10 /s/ Cole B. Richter

11 COLE B. RICHTER
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